

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1401 OF 1988

Rajasaheb V. Thorat & Ors. ..Appellants

versus

Shivaji K. Mali & Anr. ..Respondents

Mr. V. M. Parashuram for the Appellants.

Mr. Vijay Patil for the Respondents No.1.

Mr. V. B. Sakhare, AGP for the Respondent No.2.

CORAM : D. G. DESHPANDE, J.

DATE : 27TH JUNE, 2005.

ORAL ORDER :

1. Heard learned Advocates for the parties.
2. This appeal is mainly against respondent No.1 for his inclusion by the District Judge as one of the trustees in the trust and appointment as a hereditary trustee by an order dated 20.8.1987.
3. Counsel for the appellants pointed out that the respondent No. 1 as per the record of the trust and admitted position is a tenant of the agricultural land of the trust. My attention was drawn in this regard to Schedule 'A' wherein against Survey No.384 the name of the respondent No.1 is shown as tenant. My

attention was also drawn to Section 36(A) of the Bombay Public Trust Act and the provisions of the Indian Trust Act that beneficiary or a person having direct interest in the trust should not ordinarily be appointed because of the conflict of interest, as such a person cannot protect interest of the trust if it comes to any decision of the trust against his interest.

4. Counsel for the respondent no.1 contended that it does not lie in the mouth of the appellants to challenge the impugned order on the aforesaid ground because the appellants themselves are sewakaries as per the list relied upon and submitted by the counsel for the appellants. My attention was also drawn by counsel for the Respondent No.1 to Judgment of Madras High Court reported in **AIR 1972 Madras 119 Venkataraman vs. L. A. Thangappa Gounder**, wherein Madras High Court held "that combination of trusteeship and pujariship is not prohibited especially in case of small temples with insignificant income from the endowed properties".

5. It is true that as per the list annexed and relied upon by the counsel for the Appellants, Appellants themselves are also Sewekaries who have been appointed as trustees. It may be also that only because the respondent is a "Kul" or a "tenant" of some agricultural land of the trust may not be obstacle in

his way in becoming trustee.

6. However, counsel for the appellants pointed out that the observations of the District Judge in paragraph 13 that the respondent no.1 has acted all throughout the benefit of the trust and has instituted three suits, viz. Suit Nos. 125 of 1976, 127 of 1976 and 179 of 1976 against encroachers and this was done by the respondent no.1 for protection of the property of the trust when the original and real trustees were not taking any proper steps for protection of the property of the trust. Counsel for the appellants showed to me copies of the plaint in all the three suits referred above, and the plaint clearly show that those suits were filed by the respondent No.1 for claiming possession of the property for himself. Not a word is said or uttered by the respondent No.1 anywhere in those suits that the suits were being filed for protecting interest of the trust. In fact, the respondent No.1 has asserted that the property belongs to him and he has claimed decree for possession in his favour only and not in favour of the trust. Admittedly the property involved in the suit was property of the trust, therefore this conduct of the respondent No.1 will clearly indicate that he has acted not for the protection of the property of the trust but in his self interest. It is not understood as to how and from where the District Judge came to the conclusion that these suits were filed by the

Respondent No.1 with the benevolent object of protecting the trust property. When it is proved in the plaint in three suits that the respondent No.1 is claiming property of the trust as his own and filing suits after suits, then he cannot be permitted to be a trustee.

7. Counsel for the respondent no.1 strenuously urged that since 1988 the respondent No.1 is acting as a trustee and that there is no stay from this court and therefore that situation should not be changed. I do not find any merit in this submission. The question is not what is the present state of affairs but the question is whether his initial appointment as a trustee and that too hereditary trustee was right and proper. The answer is in the negative. the order of the District Judge is perverse and against the record. Therefore, order:

ORDER

. Appeal is allowed. Impugned order is set aside and quashed.

. Civil Application disposed of accordingly.

. Prayer for staying operation of this order, is rejected.

27.6.05

(D.G. DESHPANDE, J.)